

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIAGloria L. Franklin
Clerk of CourtSan Francisco Bankruptcy Court
235 Pine St.
P.O. Box 7341
San Francisco, CA 94120-7341

(415) 268-2300

Richard W. Wiking, Clerk
United States District Court
450 Golden Gate Avenue
San Francisco, CA 94102-3489**FILED**
FEB 12 2008**RECEIVED****FEB 14 2008**UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CARICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**District Court # CV 07-6239 SC**Re: *Hugo Nery Bonilla*
Judge Thomas E. Carlson
07-30309Re: *ATR-Kim Eng Capital Partners, Inc. Et al*
v Bonilla
Judge Thomas E. Carlson
07-3079

Dear Mr. Wiking:

[X] Enclosed please find a copy of **Notice of Transfer of appeal to District Court**, Notice of filing of plaintiffs/appellee's statement of election to have appeal heard by the District Court., Appellee designation and statement of issues and item. Appellant designation, statement of issues, to form the record on appeal, a certified copy of the docket. Appellant's designated items are pending to the Bankruptcy Court. Included are the appealed orders.

Gloria L. Franklin, Clerk
United States Bankruptcy Court

Dated: February 12, 2008

By: ANNA CHO-WONG
Deputy Clerk Anna Cho-Wong

727OBJ, APPEAL

**U.S. Bankruptcy Court
Northern District of California (San Francisco)
Adversary Proceeding #: 07-03079
Internal Use Only**



Assigned to: Judge Thomas E. Carlson

Related BK Case: 07-30309

Related BK Title: Hugo Nery Bonilla

Related BK Chapter: 7

Demand:

Nature[s] of Suit: 41 Objection / revocation of discharge - 727(c),(d),(e)
67 Dischargeability - 523(a)(4), fraud as fiduciary,
embezzlement, larceny

Date Filed: 07/23/07

UNITED STATES BANKRUPTCY COURT
Northern District of California
I certify that this is a true, correct and full copy
of the original document on file in my custody.
Dated 3/12/08
by Aura Cho-Wong
Deputy Clerk

Plaintiff

ATR-Kim Eng Capital Partners, Inc.
c/o William J. Lafferty
Howard Rice et al.
Three Embarcadero Center, Suite 700
San Francisco, CA 94111
(415)434-1600

ATR-Kim Eng Financial Corporation
c/o William J. Lafferty
Howard Rice et al.
Three Embarcadero Center, Suite 700
San Francisco, CA 94111
(415)434-1600

represented by **William J. Lafferty**
Howard, Rice, Nemirovski, Canady et al
3 Embarcadero Center 7th Fl.
San Francisco, CA 94111-4065
(415) 434-1600
Email: wlafferty@howardrice.com
LEAD ATTORNEY

represented by
William J. Lafferty
(See above for address)
LEAD ATTORNEY

V.

Defendant

Hugo Nery Bonilla
362 East Grand Avenue
South San Francisco, CA 94080
SSN: 553-25-2718

represented by **Heather A. Cutler**
Macdonald and Associates
221 Sansome St.
San Francisco, CA 94104
(415) 362-0449
Email: heather@macdonaldlawsf.com

Iain A. Macdonald
Macdonald and Associates
221 Sansome St.
San Francisco, CA 94104
(415) 362-0449
Email: mac@macdonaldlawsf.com
LEAD ATTORNEY

Filing Date

#

Docket Text

07/23/2007

❶

Adversary case 07-03079. 41 (Objection / revocation of discharge - 727(c),(d),(e)), 67
(Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny) Complaint by

ATR-Kim Eng Capital Partners, Inc., ATR-Kim Eng Financial Corporation against Hugo Nery Bonilla. Fee Amount \$250. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D) (Lafferty, William) (Entered: 07/23/2007)

- 07/23/2007 ❷ Summons to be Issued on Hugo Nery Bonilla *as filed by Plaintiffs ATR-Kim Eng Financial Corporation and ATR-Kim Eng Capital Partners, Inc.* (RE: related document(s)1 Complaint, filed by Plaintiff ATR-Kim Eng Financial Corporation, Plaintiff ATR-Kim Eng Capital Partners, Inc.). (Lafferty, William) (Entered: 07/23/2007)
- 07/23/2007 ❸ Adversary Cover Sheet *as filed by Plaintiffs ATR-Kim Eng Financial Corporation and ATR-Kim Eng Capital Partners, Inc.* (RE: related document(s)1 Complaint, filed by Plaintiff ATR-Kim Eng Financial Corporation, Plaintiff ATR-Kim Eng Capital Partners, Inc.). (Lafferty, William) (Entered: 07/23/2007)
- 07/23/2007 Receipt of filing fee for Complaint(07-03079) [cmp,cmp] (250.00). Receipt number 4462030, amount \$ 250.00 (U.S. Treasury) (Entered: 07/23/2007)
- 07/24/2007 ❹ Summons Issued on Hugo Nery Bonilla Answer Due 8/23/2007. Status Conference to be held on 9/7/2007 at 11:00 AM at San Francisco Courtroom 23 - Carlson. (ac,) (Entered: 07/24/2007)
- 07/24/2007 ❺ Order Regarding Initial Disclosures and Discovery Conference . (ac,) (Entered: 07/24/2007)
- 07/25/2007 ❻ Summons Service Executed on Hugo Nery Bonilla 7/24/2007 . (Lafferty, William) (Entered: 07/25/2007)
- 07/25/2007 ❼ Certificate of Service for *Complaint and Related Papers* (RE: related document(s)6 Summons Service Executed, 1 Complaint, 2 Summons to be Issued, 3 Adversary Cover Sheet,). Filed by Plaintiffs ATR-Kim Eng Capital Partners, Inc., ATR-Kim Eng Financial Corporation (Lafferty, William) (Entered: 07/25/2007)
- 08/31/2007 ❽ Motion to Dismiss Adversary Proceeding Filed by Defendant Hugo Nery Bonilla. (Attachments: # 1 Memorandum of Points and Authorities # 2 Certificate of Service) (Cutler, Heather) (Entered: 08/31/2007)
- 08/31/2007 ❾ Notice of Hearing of *Defendant's Motion To Dismiss Complaint* (RE: related document(s)8 Motion to Dismiss Adversary Proceeding filed by Defendant Hugo Nery Bonilla). Hearing scheduled for 9/28/2007 at 09:30 AM at San Francisco Courtroom 23 - Carlson. Filed by Defendant Hugo Nery Bonilla. (Cutler, Heather) (Entered: 08/31/2007)
- 09/14/2007 ❿ Brief/Memorandum in Opposition to *Defendant's Motion to Dismiss Fourth Cause of Action Pursuant to Federal Rule of Civil Procedure 12(b)(6)* (RE: related document(s)8 Motion to Dismiss Adversary Proceeding). Filed by Plaintiffs ATR-Kim Eng Capital Partners, Inc., ATR-Kim Eng Financial Corporation (Attachments: # 1 Certificate of Service) (Lafferty, William) (Entered: 09/14/2007)
- 09/21/2007 ❾ Reply to *Opposition to Motion to Dismiss* (RE: related document(s)8 Motion to Dismiss Adversary Proceeding). Filed by Defendant Hugo Nery Bonilla (Macdonald, Iain) (Entered: 09/21/2007)
- 09/26/2007 ❿ Document: *Initial Disclosures (FRCP 26(a)(1) & FRBP 7026)*.. Filed by Defendant Hugo Nery Bonilla (Attachments: # 1 Certificate of Service) (Cutler, Heather) (Entered: 09/26/2007)
- 09/27/2007 ❾ Tentative Ruling Re Motion to dismiss section 523(A)(4) claim (RE: related document(s)8 Motion to Dismiss Adversary Proceeding filed by Defendant Hugo Nery Bonilla). (ac,) (Entered: 09/28/2007)
- 09/28/2007 ❿ Courtroom Hearing Held (RE: Motion to Dismiss Adversary Proceeding - related document(s) 8) (Matter is submitted.) (gh,) (Entered: 09/28/2007)

09/30/2007	● 14	BNC Certificate of Mailing - Electronic Order (RE: related document(s) 13 Order). Service Date 09/30/2007. (Admin.) (Entered: 09/30/2007)
10/16/2007	● 15	Memorandum Re: Defendant's Rule 12(b)(6) Motion (RE: related document(s) 8 Motion to Dismiss Adversary Proceeding filed by Defendant Hugo Nery Bonilla). (dc,) (Entered: 10/16/2007)
10/16/2007	● 16	Order Denying Defendant's Motion to Dismiss Plaintiff's Fouth Claim for Relief (Related Doc # 8) (dc,) (Entered: 10/16/2007)
10/17/2007	● 17	Order To Continue Hearing (RE: related document(s) 1 Complaint filed by Plaintiff ATR-Kim Eng Financial Corporation, Plaintiff ATR-Kim Eng Capital Partners, Inc., 4 Summons Issued. Status Conference to be held on 11/16/2007 at 9:30 AM San Francisco Courtroom 23 - Carlson for 4 , (dc,) (Entered: 10/18/2007)
10/18/2007	● 18	BNC Certificate of Mailing - Electronic Order (RE: related document(s) 15 Memorandum Decision). Service Date 10/18/2007. (Admin.) (Entered: 10/18/2007)
10/18/2007	● 19	BNC Certificate of Mailing - Electronic Order (RE: related document(s) 16 Order on Motion to Dismiss Adversary Proceeding). Service Date 10/18/2007. (Admin.) (Entered: 10/18/2007)
10/20/2007	● 20	BNC Certificate of Mailing - Electronic Order (RE: related document(s) 17 Order to Continued Hearing,). Service Date 10/20/2007. (Admin.) (Entered: 10/20/2007)
10/26/2007	● 21	Motion to Reconsider <i>Order Denying Defendant's Motion to Dismiss Plaintiff's Fourth Claim For Relief</i> Filed by Defendant Hugo Nery Bonilla (RE: related document(s) 16 Order on Motion to Dismiss Adversary Proceeding). (Cutler, Heather) (Entered: 10/26/2007)
10/26/2007	● 22	Notice of Hearing (RE: related document(s) 21 Motion to Reconsider, filed by Defendant Hugo Nery Bonilla). Hearing scheduled for 12/14/2007 at 09:30 AM at San Francisco Courtroom 23 - Carlson. Filed by Defendant Hugo Nery Bonilla. (Attachments: # 1 Certificate of Service) (Cutler, Heather) (Entered: 10/26/2007)
11/14/2007	● 23	Notice of Continued Hearing (RE: related document(s) 17 Order to Continued Hearing,). Filed by Defendant Hugo Nery Bonilla. (Attachments: # 1 Certificate of Service) (Cutler, Heather) (Entered: 11/14/2007)
11/16/2007	● 24	Motion for Summary Judgment <i>on the Fourth Claim for Relief</i> Filed by Plaintiffs ATR-Kim Eng Capital Partners, Inc., ATR-Kim Eng Financial Corporation. (Attachments: # 1 Certificate of Service) (Lafferty, William) (Entered: 11/16/2007)
11/16/2007	● 25	Request To Take Judicial Notice <i>In Support of Plaintiffs' Motion for Summary Judgment on the Fourth Claim for Relief</i> (RE: related document(s) 24 Motion for Summary Judgment/Adjudication). Filed by Plaintiffs ATR-Kim Eng Capital Partners, Inc., ATR-Kim Eng Financial Corporation (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4) (Lafferty, William) (Entered: 11/16/2007)
11/16/2007	● 26	Declaration of Long X. Do in Support of <i>Plaintiffs' Motion for Summary Judgment on the Fourth Claim for Relief</i> (RE: related document(s) 24 Motion for Summary Judgment/Adjudication). Filed by Plaintiffs ATR-Kim Eng Capital Partners, Inc., ATR-Kim Eng Financial Corporation (Attachments: # 1 Exhibit A) (Lafferty, William) (Entered: 11/16/2007)
11/16/2007	●	Courtroom Hearing Continued (RE: Summons Issued - related document(s) 4) (Continued to 12/14/2007 09:30 AM at San Francisco Courtroom 23 - Carlson) (ba,) (Entered: 11/16/2007)
11/30/2007	● 27	Brief/Memorandum in Opposition to : <i>Plaintiffs' Opposition to the Defendant's Motion to Reconsider Order Denying Defendant's Motion to Dismiss Plaintiff's Fourth Claim for Relief</i> (RE: related document(s) 21 Motion to Reconsider,). Filed by Plaintiffs ATR-Kim Eng Capital

Partners, Inc., ATR-Kim Eng Financial Corporation (Attachments: # 1 Certificate of Service) (Lafferty, William) (Entered: 11/30/2007)

11/30/2007	● <u>28</u>	Brief/Memorandum in Opposition to (RE: related document(s) <u>24</u> Motion for Summary Judgment/Adjudication). Filed by Defendant Hugo Nery Bonilla (Attachments: # <u>1</u> Request For Judicial Notice# <u>2</u> Exhibit A# <u>3</u> Exhibit B# <u>4</u> Exhibit C# <u>5</u> Exhibit D# <u>6</u> Exhibit E and F# <u>7</u> Exhibit G# <u>8</u> Certificate of Service) (Cutler, Heather) (Entered: 11/30/2007)
12/07/2007	● <u>29</u>	Reply to : <i>Plaintiffs' Reply in Support of Motion for Summary Judgment on the Fourth Claim for Relief</i> (RE: related document(s) <u>24</u> Motion for Summary Judgment/Adjudication). Filed by Plaintiffs ATR-Kim Eng Capital Partners, Inc., ATR-Kim Eng Financial Corporation (Attachments: # <u>1</u> Certificate of Service) (Lafferty, William) (Entered: 12/07/2007)
12/07/2007	● <u>30</u>	Reply to <i>Plaintiffs' Opposition to Defendant's Motion to Reconsider</i> (RE: related document(s) <u>21</u> Motion to Reconsider,). Filed by Defendant Hugo Nery Bonilla (Attachments: # <u>1</u> Certificate of Service) (Cutler, Heather) (Entered: 12/07/2007)
12/14/2007	●	Courtroom Hearing Held (RE: Motion to Reconsider - related document(s) <u>21</u>) (Motion to reconsider is denied. Motion for summary judgement is granted. Motion for stay can be set for 1/8/08 at 9:30 AM.)(gh,) (Entered: 12/14/2007)
12/17/2007	● <u>31</u>	Memorandum re defendant's motion for reconsideration and plaintiff's motion for summary judgment (RE: related document(s) <u>21</u> Motion to Reconsider filed by Defendant Hugo Nery Bonilla). (ac,) (Entered: 12/20/2007)
12/22/2007	● <u>32</u>	BNC Certificate of Mailing - Electronic Order (RE: related document(s) <u>31</u> Memorandum Decision). Service Date 12/22/2007. (Admin.) (Entered: 12/22/2007)
01/02/2008	● <u>33</u>	Order Denying defendant's Motion for Reconsideration and granting plaintiffs' motion for summary judgment on fourth cause of action. (Related Doc # <u>21</u>) (ac,) (Entered: 01/02/2008)
01/02/2008	● <u>34</u>	Partial Summary Judgment on fourth cause of action and rule 54(b) certification For plaintiff's ATR-Kim, Capital Partners, Inc. and ATR-Kim Eng Financial Corporation Against defendant Hugo Nery Bonilla. . (ac,) (Entered: 01/02/2008)
01/02/2008	●	Hearing Set On (RE: related document(s) <u>33</u> Order Denying defendant's Motion for Reconsideration and granting plaintiffs' motion for summary judgment on fourth cause of action. (Related Doc # <u>21</u>) (ac,). A hearing on the motion for stay pending appeal is scheduled for 1/18/2008 at 09:30 AM at San Francisco Courtroom 23 - Carlson. (ac,) (Entered: 01/02/2008)
01/04/2008	● <u>35</u>	BNC Certificate of Mailing - Electronic Order (RE: related document(s) <u>33</u> Order on Motion to Reconsider). Service Date 01/04/2008. (Admin.) (Entered: 01/04/2008)
01/04/2008	● <u>36</u>	BNC Certificate of Mailing - Electronic Order (RE: related document(s) <u>34</u> Partial Judgment). Service Date 01/04/2008. (Admin.) (Entered: 01/04/2008)
01/08/2008	● <u>37</u>	Stipulation, To Stay Enforcement of Partial Summary Judgment On Plaintiffs' Fourth Cause of Action Pending Appeal Filed by Defendant Hugo Nery Bonilla. (Macdonald, Iain) (Entered: 01/08/2008)
01/08/2008	● <u>38</u>	Order approving stipulation to stay enforcement of partial summary judgment on plaintiff's fourth cause of action pending appeal (RE: related document(s) <u>37</u> Stipulation for Miscellaneous Relief filed by Defendant Hugo Nery Bonilla). (ac,) (Entered: 01/08/2008)
01/08/2008	● <u>39</u>	Notice of Change of Address of <i>Macdonald & Associates</i> Filed by Defendant Hugo Nery Bonilla. (Cutler, Heather) (Entered: 01/08/2008)

01/09/2008	<u>40</u>	Notice of Appeal to 9th Circuit Court (Direct Appeal) , Fee Amount \$ 255. (RE: related document(s) <u>34</u> Partial Judgment, <u>33</u> Order on Motion to Reconsider). Appellant Designation due by 1/22/2008. Filed by Defendant Hugo Nery Bonilla (Cutler, Heather) (Entered: 01/09/2008)
01/09/2008		Receipt of filing fee for Notice of Appeal(07-03079) [appeal,ntcapl] (255.00). Receipt number 4994720, amount \$ 255.00 (U.S. Treasury) (Entered: 01/09/2008)
01/11/2008	<u>41</u>	Notice of Referral of Appeal to Bankruptcy Appellant Panel (RE: related document(s) <u>40</u> Notice of Appeal filed by Defendant Hugo Nery Bonilla). (ac,) (Entered: 01/11/2008)
01/11/2008	<u>42</u>	Courts Certificate of Mailing. Number of notices mailed: 3 (RE: related document(s) <u>41</u> Notice of Referral of Appeal to BAP). (ac,) (Entered: 01/11/2008)
01/11/2008	<u>43</u>	Transmission of Notice of Appeal to BAP (RE: related document(s) <u>40</u> Notice of Appeal filed by Defendant Hugo Nery Bonilla). (ac,) (Entered: 01/11/2008)
01/17/2008	<u>44</u>	Statement of Issues on Appeal, <i>and Designation of Record</i> (RE: related document(s) <u>40</u> Notice of Appeal, filed by Defendant Hugo Nery Bonilla). (Attachments: # <u>1</u> Certificate of Service) Filed by Defendant Hugo Nery Bonilla (Cutler, Heather) (Entered: 01/17/2008)
01/18/2008	<u>45</u>	Transmittal to BAP re Appellant Designation, Statement of Issues. (RE: related document(s) <u>40</u> Notice of Appeal). (ac,) (Entered: 01/18/2008)
01/23/2008	<u>46</u>	Return of case number from BAP NC-08-1012 (RE: related document(s) <u>40</u> Notice of Appeal). (ac,) (Entered: 01/23/2008)
01/29/2008	<u>47</u>	Notice Regarding <i>Filing of Plaintiffs/Appellees' Statement of Election to Have Appeal Heard by the District Court</i> (RE: related document(s) <u>40</u> Notice of Appeal, filed by Defendant Hugo Nery Bonilla). Filed by Plaintiffs ATR-Kim Eng Capital Partners, Inc., ATR-Kim Eng Financial Corporation. (Attachments: # <u>1</u> Exhibit 1) (Lafferty, William) (Entered: 01/29/2008)
01/29/2008	<u>48</u>	Appellee Designation of Contents for Inclusion in Record of Appeal <i>and Statement of Issues</i> (RE: related document(s) <u>40</u> Notice of Appeal, filed by Defendant Hugo Nery Bonilla). Filed by Plaintiffs ATR-Kim Eng Capital Partners, Inc., ATR-Kim Eng Financial Corporation (Lafferty, William) (Entered: 01/29/2008)
01/29/2008	<u>49</u>	Certificate of Service (RE: related document(s) <u>48</u> Appellee Designation, <u>47</u> Notice,). Filed by Plaintiffs ATR-Kim Eng Capital Partners, Inc., ATR-Kim Eng Financial Corporation (Lafferty, William) (Entered: 01/29/2008)
01/31/2008	<u>50</u>	Notice of transfer of appeal to District Court (RE: related document(s) <u>40</u> Notice of Appeal filed by Defendant Hugo Nery Bonilla). . (ac,)District Court #CV 07-6239 SC. Modified on 2/12/2008 (ac,). (Entered: 02/04/2008)
02/06/2008	<u>51</u>	Motion : <i>Administrative Motion to Consider Whether Cases Should Be Related</i> Filed by Plaintiffs ATR-Kim Eng Capital Partners, Inc., ATR-Kim Eng Financial Corporation. (Attachments: # <u>1</u> Certificate of Service) (Lafferty, William) (Entered: 02/06/2008)
02/06/2008	<u>52</u>	Declaration of Long X. Do in Support of <i>Administrative Motion to Consider Whether Cases Should Be Related</i> (RE: related document(s) <u>51</u> Motion Miscellaneous Relief). Filed by Plaintiffs ATR-Kim Eng Capital Partners, Inc., ATR-Kim Eng Financial Corporation (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B) (Lafferty, William) (Entered: 02/06/2008)
02/06/2008		**COURT ENTRY** Waiting for appellant and appellees hard copies of designated items delivered to court. (RE: related document(s) <u>48</u> Appellee Designation filed by Plaintiff ATR-Kim Eng Financial Corporation, Plaintiff ATR-Kim Eng Capital Partners, Inc., <u>44</u> Statement of Issues on Appeal filed by Defendant Hugo Nery Bonilla). (ac,) (Entered: 02/06/2008)

- 02/07/2008 **⑤3** Motion to Set Hearing on *Administrative Motion to Consider Whether Cases Should be Related* Filed by Interested Party Monica Araneta (RE: related document(s)51 Motion Miscellaneous Relief filed by Plaintiff ATR-Kim Eng Financial Corporation, Plaintiff ATR-Kim Eng Capital Partners, Inc.). (Attachments: # 1 Certificate of Service) (Rome-Banks, Julie) (Entered: 02/07/2008)
- 02/07/2008 **⑤4** Amended Certificate of Service (RE: related document(s)53 Motion to Set Hearing,). Filed by Interested Party Monica Araneta (Rome-Banks, Julie) (Entered: 02/07/2008)
- 02/12/2008 **⑤5** Transmittal of transfer of appeal to District Court. District Court #CV 07-6239 SC (RE: related document(s)40 Notice of Appeal,). (ac,) (Entered: 02/12/2008)

U.S. Bankruptcy Appellate Panel
of the Ninth Circuit
125 South Grand Avenue, Pasadena, California 91105
Appeals from Central California (626) 229-7220
Appeals from all other Districts (626) 229-7225

FILED

JAN 31 2008

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

In Re: HUGO N. BONILLA
BAP No.: NC-08-1012
Bankruptcy No(s).: 07-30309 TC
Adversary No(s).: 07-03079 TC

NOTICE OF TRANSFER OF APPEAL TO DISTRICT COURT

A party to the appeal has timely filed an objection to the disposition of this matter by the Bankruptcy Appellate Panel. See 28 USC Section 158. Consequently, this appeal is herewith transferred to United States District Court, San Francisco, CA. Please acknowledge receipt of the case file listed above by signing and returning a copy of this transmittal form.

CV 06239

Harold S. Marenus, BAP Clerk

By: Freddie Brown
Deputy Clerk

Date: January 25, 2008

Please acknowledge receipt of
the case file listed above.

Dated: _____

Signed: _____
District Court Deputy

Assigned District Court No.

cc: Bankruptcy Court
All Parties

FILED

JAN 18 2008

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

Gloria L. Franklin
Clerk of Court

San Francisco Bankruptcy Court
235 Pine St.
P.O. Box 7341
San Francisco, CA 94120-7341

(415) 268-2300

RECEIVED
Harold S. Maranus, Clerk
U. S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

JAN 28 2008

Bankruptcy Appellate Panel of
the Ninth Circuit
125 S Grand Avenue
Pasadena, CA 91105

FILED _____
DOCKETED DATE INITIAL

COT-6239 SC

Re: *Hugo Nery Bonilla, debtor*
07-30309 TC
Judge Thomas E. Carlson

Re: *ATR-Kim Eng Capital Partners, Inc. et al*
v
Bonilla
07-3079 TC

Attn: Edwina Clay

[X] Enclosed please find a conformed copy of the appellant designation, statement of issues, to form the record on appeal.

Gloria L. Franklin, Clerk
United States Bankruptcy Court

Dated: January 18, 2008

ANNA CHO-WONG
By: _____
Deputy Clerk Anna Cho-Wong

1 MICHAEL J. BAKER (No. 56492)
2 WILLIAM J. LAFFERTY (No. 120814)
3 LONG X. DO (No. 211439)
HOWARD RICE NEMEROVSKI CANADY
3 FALK & RABKIN
A Professional Corporation
4 Three Embarcadero Center, 7th Floor
San Francisco, California 94111-4024
5 Telephone: 415/434-1600
Facsimile: 415/217-5910

6 Attorneys for Plaintiffs
7 ATR-KIM ENG FINANCIAL CORPORATION and
ATR-KIM ENG CAPITAL PARTNERS, INC.

8
9
10
11
12
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

13 In re
14 HUGO N. BONILLA,
15 Debtor.

No. 07-30309
Chapter 7 Case
Adv. Proc. No. 07-03079

16 ATR-KIM ENG FINANCIAL CORPORATION
and ATR-KIM ENG CAPITAL PARTNERS,
17 INC.,

NOTICE OF FILING OF
PLAINTIFFS/APPELLEES'
STATEMENT OF ELECTION TO
HAVE APPEAL HEARD BY THE
DISTRICT COURT

18 Plaintiffs,

19 v.
20 HUGO NERY BONILLA,
21 Defendant.

22
23
24
25
26
27
28
NOTICE OF FILING STATEMENT OF ELECTION

1 **PLEASE TAKE NOTICE** that Plaintiffs ATR-Kim Eng Financial Corporation and ATR-
2 Kim Eng Capital Partners, Inc., Appellees in the appeal of an order from the above-captioned
3 adversary proceeding, which appeal is currently pending before the Bankruptcy Appellate Panel of
4 the Ninth Circuit as B.A.P. Case No. NC-08-1012, have filed a Plaintiffs/Appellees' Statement of
5 Election to Have Appeal Heard by the District Court, a copy of which is attached hereto as Exhibit
6 1.

8 Dated: January 23, 2008

**HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN**
A Professional Corporation

By: _____ /s/
WILLIAM J. LAFFERTY

Attorneys for ATR-KIM ENG FINANCIAL
CORPORATION and ATR-KIM ENG CAPITAL
PARTNERS, INC.

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN

NOTICE OF FILING STATEMENT OF ELECTION

EXHIBIT 1

1 MICHAEL J. BAKER (No. 56492)
2 WILLIAM J. LAFFERTY (No. 120814)
3 LONG X. DO (No. 211439)
HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
A Professional Corporation
4 Three Embarcadero Center, 7th Floor
San Francisco, California 94111-4024
5 Telephone: 415/434-1600
Facsimile: 415/217-5910

6 Attorneys for Plaintiffs/Appellees
7 ATR-KIM ENG FINANCIAL CORPORATION
and ATR-KIM ENG CAPITAL PARTNERS,
8 INC.

FILED

JAN 26 2008

MAROLYN MARSHAL CLERK
U.S. BANKRUPTCY COURT
OF THE NINTH CIRCUIT

13 In re

Bankr. Ct. No. 07-30309 (TC)

14 HUGO N. BONILLA,

Adv. Proc. No. 07-03079 (TC)

15 Debtor.

16 BAP No. NC-08-1012

ATR-KIM ENG FINANCIAL
17 CORPORATION and ATR-KIM ENG
CAPITAL PARTNERS, INC.,

18 Plaintiffs/Appellees,

19 v.

20 HUGO NERY BONILLA,

21 Defendant/Appellant.

24 PLAINTIFFS/APPELLEES'
25 STATEMENT OF ELECTION TO HAVE APPEAL HEARD
BY THE DISTRICT COURT

26
27 STATEMENT OF ELECTION
28

1 Pursuant to 28 U.S.C. section 158(c)(1) and Rule 8001(e) of the Federal Rules of
2 Bankruptcy Procedure, ATR-Kim Eng Financial Corporation and ATR-Kim Eng Capital
3 Partners, Inc., Plaintiffs/Appellees in the above-captioned appellate proceeding, hereby elect
4 to have this appeal heard by the United States District Court for the Northern District of
5 California.

6

7 Dated: January 23, 2008

HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
A Professional Corporation

9
10 By: _____

WILLIAM J. LAFFERTY

11 Attorneys for Plaintiffs/Appellees ATR-KIM ENG
12 FINANCIAL CORPORATION and ATR-KIM ENG
CAPITAL PARTNERS, INC.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

PROOF OF SERVICE BY MAIL

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen (18) years and not a party to the within action; my business address is Three Embarcadero Center, 7th Floor, San Francisco, California 94111-4024.

I am readily familiar with the practice for collection and processing of documents for mailing with the United States Postal Service of Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation, and that practice is that the documents are deposited with the United States Postal Service with postage fully prepaid the same day as the day of collection in the ordinary course of business.

On January 24, 2008, I served the following document(s) described as
Plaintiffs/Appellees' Statement of Election to Have Appeal Heard by the District Court
on the persons listed below by placing the document(s) for deposit in the United States
Postal Service through the regular mail collection process at the law offices of Howard Rice,
Nemerovski Canady Falk & Rabkin, A Professional Corporation, located at Three
Embarcadero Center, 7th Floor, San Francisco, California, to be served by mail addressed as
follows:

Michael C. Fallon
Attorney at Law
100 E Street, Suite 219
Santa Rosa, California 95404
*[Attorney for Janina Elder
Bankruptcy Trustee]*

Iain A. Macdonald
Law Offices of Macdonald and Associates
2 Embarcadero Center, Suite 1670
San Francisco, CA 94111-3930
[Attorney for Defendant/Appellant Hugo N. Bonilla]

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California on January 24, 2008.

Ashley Ray
Ashley B. Ray

W03 170140001/1476414/v1

1 MICHAEL J. BAKER (No. 56492)
 2 WILLIAM J. LAFFERTY (No. 120814)
 3 LONG X. DO (No. 211439)
 HOWARD RICE NEMEROVSKI CANADY
 FALK & RABKIN
 A Professional Corporation
 4 Three Embarcadero Center, 7th Floor
 San Francisco, California 94111-4024
 5 Telephone: 415/434-1600
 Facsimile: 415/217-5910

6 Attorneys for Plaintiffs/Appellees
 7 ATR-KIM ENG FINANCIAL CORPORATION
 and ATR-KIM ENG CAPITAL PARTNERS,
 8 INC.

9
 10 UNITED STATES BANKRUPTCY COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13
 HOWARD
 RICE
 NEMEROVSKI
 CANADY
 FALK
 & RABKIN
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

In re No. 07-30309
 HUGO N. BONILLA, Chapter 7 Case
 Debtor.

Adv. Proc. No. 07-03079

ATR-KIM ENG FINANCIAL
 CORPORATION and ATR-KIM ENG
 CAPITAL PARTNERS, INC.,

Plaintiffs/Appellees,

v.

HUGO NERY BONILLA,
 Defendant/Appellant.

PLAINTIFFS/APPELLEES'
 DESIGNATION OF ADDITIONAL ITEMS FOR RECORD ON APPEAL
AND STATEMENT OF ISSUES

DESIGNATION OF RECORD AND STATEMENT OF ISSUES

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, ATR-Kim Eng Financial Corporation and ATR-Kim Eng Capital Partners, Inc., Plaintiffs and Appellees in the above-captioned appellate proceeding (collectively, "ATR"), hereby submit Appellees' designation of additional items to be included in the record on appeal and statement of issues.

ADDITIONAL ITEMS FOR THE RECORD ON APPEAL

1. Order Denying Defendant's Motion to Dismiss Plaintiff's Fourth Claim for Relief, entered October 16, 2007 [docket entry #16].

STATEMENT OF ISSUES

1. Whether the Bankruptcy Court erred in holding that Hugo N. Bonilla, the Debtor and Defendant herein, was a "fiduciary" within the meaning of 11 U.S.C. section 523(a)(4), so as to render his debt to ATR nondischargeable.

Dated: January 29, 2008.

HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
A Professional Corporation

By: _____ /s/
WILLIAM J. LAFFERTY

Attorneys for Plaintiffs/Appellees ATR-KIM ENG FINANCIAL CORPORATION and ATR-KIM ENG CAPITAL PARTNERS, INC.

W03 012908-170140001/Y07/1477063/v2

1 MICHAEL J. BAKER (No. 56492)
 2 WILLIAM J. LAFFERTY (No. 120814)
 3 LONG X. DO. (No. 211439)
 HOWARD RICE NEMEROVSKI CANADY
 FALK & RABKIN
 A Professional Corporation
 4 Three Embarcadero Center, 7th Floor
 San Francisco, California 94111-4024
 5 Telephone: 415/434-1600
 Facsimile: 415/217-5910

6 Attorneys for Creditors
 7 ATR-KIM ENG FINANCIAL CORPORATION
 AND ATR-KIM ENG CAPITAL PARTNERS,
 INC.

9
 10 UNITED STATES BANKRUPTCY COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 In re Case No. 07-30309
 14 HUGO N. BONILLA, Chapter 7 Case
 15 Debtor.

16 ATR-KIM ENG FINANCIAL Adv. Proc. No. 07-03079
 17 CORPORATION and ATR-KIM ENG
 CAPITAL PARTNERS, INC.,
 18 Plaintiffs,

19 v.
 20 HUGO NERY BONILLA,
 21 Defendant.

1 I, Ashley B. Ray, declare:

2 I am a resident of the State of California and over the age of eighteen years, and not a
 3 party to the within action; my business address is Three Embarcadero Center, 7th Floor, San
 4 Francisco, California 94111-4024. On January 29, 2008, I served the following
 5 document(s) described as:

6 **NOTICE OF FILING OF PLAINTIFFS/APPELLEES' STATEMENT OF
 7 ELECTION TO HAVE APPEAL HEARD BY THE DISTRICT COURT;**

8 **PLAINTIFFS/APPELLEES' DESIGNATION OF ADDITIONAL ITEMS FOR
 9 RECORD ON APPEAL AND STATEMENT OF ISSUES**

- 10 by transmitting via e-mail the document(s) listed above to the e-mail
 address(es) indicated below on this date before 5:00 p.m.
- 11 by transmitting via facsimile the document(s) listed above to the fax number(s)
 set forth below on this date before 5:00 p.m.
- 12 by placing the document(s) listed above in a sealed envelope with postage
 thereon fully prepaid, in the United States mail at San Francisco, California
 addressed as set forth below.
- 13 by causing personal delivery by First Legal Support Services of the
 document(s) listed above to the person(s) at the address(es) set forth below; or
- 14 by placing the document(s) listed above in a sealed Federal Express envelope
 and affixing a pre-paid air bill, and causing the envelope to be delivered to a
 Federal Express agent for delivery

15 Iain A. Macdonald
 16 Heather A. Cutler
 17 Macdonald and Associates
 18 221 Sansome Street
 19 San Francisco, CA 94104

20 Michael C. Fallon
 21 Law Offices of Michael C. Fallon
 22 100 E Street, #219
 23 Santa Rosa, CA 95404

24 *[Counsel for the Trustee]*

25 *[Counsel for the Debtor]*

26 I am readily familiar with the practice for collection and processing of documents for
 27 mailing with the United States Postal Service of Howard Rice Nemerovski Canady Falk &
 28 Rabkin, A Professional Corporation, and that practice is that the documents are deposited
 with the United States Postal Service with postage fully prepaid the same day as the day of
 collection in the ordinary course of business.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed at San Francisco, California on January 29, 2008.
3
4 _____ /s/
5 Ashley B. Ray
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN

Entered on Docket
October 16, 2007
GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: October 16, 2007


THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re) Case No. 07-30309 TEC
HUGO NERY BONILLA,) Chapter 7
Debtor.)
ATR-KIM ENG CAPITAL PARTNERS, INC.,)
and ATR-KIM ENG FINANCIAL) Adv. Proc. No. 07-3079 TC
CORPORATION,)
Plaintiffs,)
vs.)
HUGO NERY BONILLA,)
Defendant.)

**ORDER DENYING DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' FOURTH
CLAIM FOR RELIEF**

On September 28, 2007, the court held a hearing on Defendant's Motion to Dismiss Plaintiffs' fourth claim for relief. Iain A. Macdonald appeared for Defendant. William J. Lafferty appeared for Plaintiffs.

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS

-1-

1 Upon due consideration, and for the reasons stated in the
2 accompanying memorandum, Defendant's motion is denied.

3 ****END OF ORDER****

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS

- 2 -

1 Court Service List
2
3
4 Iain A. Macdonald, Esq.
5 Law Offices of Macdonald & Associates
6 Two Embarcadero Center, Suite 1670
7 San Francisco, CA 94111-3930
8
9 Michael C. Fallon, Esq.
10 Law Offices of Michael C. Fallon
11 100 E Street, Suite 219
12 Santa Rosa, CA 95404
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MACDONALD & ASSOCIATES
 2 IAIN A. MACDONALD (State Bar No. 051073)
 2 HEATHER A. CUTLER (State Bar No. 217837)
 3 221 Sansome Street
 3 San Francisco, CA 94104
 4 Telephone: (415) 362-0449
 4 Facsimile: (415) 394-5544
 5 Attorneys for Defendant,
 HUGO NERY BONILLA

RECEIVED
 Harold S. Maranis, Clerk
 U. S. BKCY. APP. PANEL
 OF THE NINTH CIRCUIT

JAN 28 2008

FILED _____
 DOCKETED _____ DATE INITIAL

8 UNITED STATES BANKRUPTCY COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10 In Re:
 11 HUGO NERY BONILLA,
 12 Debtors.

14 ATR-KIM ENG FINANCIAL
 15 CORPORATION and ATR-KIM ENG
 CAPITAL PARTNERS, INC.,

Case No. 07-30309
 Chapter 7

Adversary Proceeding No. 07-03079
 DESIGNATION OF RECORD AND
 STATEMENT OF ISSUES ON APPEAL

16 Plaintiffs,

17 vs.

18 HUGO NERY BONILLA,

19 Defendant.

DESIGNATION OF RECORD

21 Appellant Hugo Nery Bonilla designates the following for inclusion on the record on appeal:

- 22 1. Complaint (1) to determine that Debtor Hugo Bonilla is Not Entitled to a Discharge in
- 23 Bankruptcy Pursuant to 11 U.S.C. § 727(a) and (2) Seeking Determination of Non-Dischargeability
- 24 of Debt Pursuant to 11 U.S.C. § 523(a)(4)
- 25 2. Motion to Dismiss Complaint
- 26 3. Memorandum of Points and Authorities Supporting Motion to Dismiss Complaint
- 27 4. Memorandum of Points and Authorities in Opposition to Defendant's Motion to
- 28 Dismiss Fourth Cause of Action Pursuant to Federal Rule of Civil Procedure 12(b)(6)

- 1 5. Reply in Support of Motion to Dismiss Complaint
- 2 6. Tentative Ruling Re Motion to Dismiss Section 523(a)(4) Claim
- 3 7. Memorandum re Defendant's Rule 12(b)(6) Motion
- 4 8. Motion to Reconsider Order Denying Defendant's Motion to Dismiss Plaintiff's
- 5 Fourth Claim For Relief
 - 6 9. Plaintiffs' Notice of Motion and Motion For Summary Judgment on the Fourth Claim
 - 7 For Relief; Memorandum of Points and Authorities in Support Thereof
 - 8 10. Request For Judicial Notice In Support of Plaintiffs' Motion For Summary Judgment
 - 9 on the Fourth Claim For Relief
 - 10 11. Declaration of Long X. Do In Support of Plaintiffs' Motion For Summary Judgment
 - 11 on the Fourth Claim For Relief and Request For Judicial Notice
 - 12 12. Defendant's Opposition to Plaintiffs' Motion For Summary Judgment on the Fourth
 - 13 Claim For Relief
 - 14 13. Request For Judicial Notice In Support of Defendant's Opposition to Plaintiffs'
 - 15 Motion For Summary Judgment on the Fourth Claim For Relief
 - 16 14. Plaintiffs' Opposition to the Defendant's Motion to Reconsider Order Denying
 - 17 Defendant's Motion to Dismiss Plaintiffs' Fourth Claim For Relief
 - 18 15. Plaintiffs' Reply in Support of Motion for Summary Judgment on the Fourth Claim
 - 19 for Relief
 - 20 16. Defendant's Reply to Plaintiffs' Opposition to Motion to Reconsider Order Denying
 - 21 Defendant's Motion to Dismiss Plaintiffs' Fourth Claim For Relief
 - 22 17. Memorandum Re Defendant's Motion for Reconsideration and Plaintiffs' Motion for
 - 23 Summary Judgment
 - 24 18. Order Denying Defendant's Motion for Reconsideration and Granting Plaintiffs'
 - 25 Motion for Summary Judgment on the Fourth Cause of Action
 - 26 19. Partial Summary Judgment on Fourth Cause of Action and Rule 54(b) Certification
 - 27 20. Notice Of Appeal On Partial Summary Judgment on Fourth Cause of Action and of
 - 28 Order Denying Defendant's Motion for Reconsideration and Granting Plaintiffs' Motion for

1 Summary Judgment on the Fourth Cause of Action

2 21. Adversary Proceeding Case Docket

3 22. Transcript of the hearing on December 14, 2007

4 23. Transcript of the hearing on September 28, 2007

5 **STATEMENT OF ISSUES ON APPEAL**

6 1. Did the Bankruptcy Court err by ruling that Delaware law imposes fiduciary duties on
7 corporate directors which are “substantially similar” to those held by trustees of express or technical
8 trusts?

9 2. Did the Bankruptcy Court err by departing from Ninth Circuit precedent, namely, that
10 a debt may only be deemed nondischargeable under 11 U.S.C. § 523(a)(4) if the debtor was a
11 fiduciary to the moving party pursuant to an express or technical trust, by holding that § 523(a)(4)
12 precludes dischargeability of a debt where the debtor’s duties were “substantially similar” to those of
13 a trustee of an express or technical trust?

14 3. Did the Bankruptcy Court err by ruling that Delaware corporate directors are
15 fiduciaries within the meaning of § 523(a)(4)?

16 DATED: January 17, 2008

MACDONALD & ASSOCIATES

18 By: _____ /s/
19 Heather A. Cutler, Attorneys for Defendant,
Hugo Nery Bonilla

20

21

22

23

24

25

26

27

28

RECEIVED
Harold S. Munson, Clerk
U. S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

JAN 28 2008

FILED _____
DOCKETED _____
DATE INITIAL

1 MACDONALD & ASSOCIATES
2 IAIN A. MACDONALD (State Bar No. 051073)
3 HEATHER A. CUTLER (State Bar No. 217837)
4 Two Embarcadero Center, Suite 1670
5 San Francisco, CA 94111-3930
6 Telephone: (415) 362-0449
7 Facsimile: (415) 394-5544

5 Attorneys for Debtor,
6 HUGO NERY BONILLA

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 In Re: Case No. 07-30309
12 HUGO NERY BONILLA, Chapter 7
13 Debtor. Adv. Proc. No. 07-03079

14
15 ATR-KIM ENG FINANCIAL
16 CORPORATION AND ATR-KIM ENG
17 CAPITAL PARTNERS, INC.,

Plaintiffs,

CERTIFICATE OF SERVICE

18 vs.

19 HUGO NERY BONILLA,
20 Defendant.

21 I, the undersigned, state that I am employed in the City and County of San Francisco, State of
22 California; that I am over the age of eighteen years and not a party to the within action; that my
23 business address is Two Embarcadero Center, Suite 1670, San Francisco, California, 94111-3930.
24

25 On the date hereon, I served the foregoing document(s) described as:

26 DESIGNATION OF RECORD AND STATEMENT OF ISSUES ON APPEAL

27 on the following on this 17th day of January, 2008, at San Francisco, California:
28

Entered on Docket
January 02, 2008
 GLORIA L. FRANKLIN, CLERK
 U.S. BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: January 02, 2008

Thomas E. Carlson
THOMAS E. CARLSON
 U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 07-30309 TEC
HUGO NERY BONILLA,)	Chapter 7
)	
Debtor.)	
)	
ATR-KIM ENG CAPITAL PARTNERS, INC.,)	Adv. Proc. No. 07-3079 TC
and ATR-KIM ENG FINANCIAL)	
CORPORATION,)	
)	
Plaintiffs,)	
)	
vs.)	Date: January 18, 2008
)	Time: 9:30 a.m.
HUGO NERY BONILLA,)	Crtm: 235 Pine St., 23rd Fl.
)	San Francisco, CA
Defendant.)	
)	

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION AND GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON FOURTH CAUSE OF ACTION

The court held a hearing on December 14, 2007 on Defendant's Motion to Reconsider Order Denying Defendant's Motion to Dismiss Plaintiff's Fourth Cause of Action and on Plaintiffs' Motion for Summary Judgment on Fourth Cause of Action. William J. Lafferty appeared for Plaintiffs. Iain A. Macdonald appeared for Defendant.

**ORDER DENYING DEF.'S MTN FOR RECONDID.
 AND GRANTING PLANTIFFS' MTN. FOR
 PARTIAL SUMM. JUDG.**

-1-

Upon due consideration, and for reasons stated on the record at the hearing and in the accompanying memorandum, the court hereby orders as follows.

4 (1) Defendant's motion for reconsideration is denied.

5 (2) The court grants Plaintiffs' motion for summary judgment
6 on the fourth claim for relief and determines that the
7 \$24,981,069.66 judgment entered on January 10, 2007 in Delaware
8 Court of Chancery Case No. CIV.A. 489 is excepted from discharge
9 under 11 U.S.C. § 523(a)(4).

10 (3) The court will enter a separate partial judgment on the
11 fourth claim for relief, and will direct entry of final judgment as
12 to this claim.

13 (4) Upon stipulation of the parties on the record at the
14 hearing, the court establishes the following schedule regarding
15 Defendant's Motion for Stay Pending Appeal of the Partial Judgment:

16 (a) Defendant shall file and serve a Motion for Stay on or
17 before January 4, 2008.

18 (b) Plaintiffs shall file and serve a response to the Motion
19 on or before January 14, 2008.

20 (c) A hearing on the motion for stay pending appeal is set for
21 January 18, 2008 at 9:30 a.m.

*** *END OF ORDER* ***

23

24

25

26

27

28

ORDER DENYING DEF.'S MTN FOR RECOND.
AND GRANTING PLAINTIFFS' MTN. FOR
PARTIAL SUMM. JUDG.

1 Court Service List
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Iain A. Macdonald, Esq.
Law Offices of Macdonald & Associates
Two Embarcadero Center, Suite 1670
San Francisco, CA 94111-3930

Michael C. Fallon, Esq.
Law Offices of Michael C. Fallon
100 E Street, Suite 219
Santa Rosa, CA 95404

Michael J. Baker, Esq.
William J. Lafferty, Esq.
Matthew L. Beltramo, Esq.
Howard, Rice, Nemerovski, Canady,
Falk & Rabkin
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111

**Entered on Docket
January 02, 2008**
GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



1

Signed and Filed: January 02, 2008

**THOMAS E. CARLSON
U.S. Bankruptcy Judge**

7

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 In re) Case No. 07-30309 TEC
11)
12 HUGO NERY BONILLA,) Chapter 7
13)
14 Debtor.)

14 ATR-KIM ENG CAPITAL PARTNERS, INC.,) Adv. Proc. No. 07-3079 TC
15 and ATR-KIM ENG FINANCIAL)
CORPORATION,)

Plaintiffs

vs.

19 HUGO NERY BONILLA

Defendant

PARTIAL SUMMARY JUDGMENT ON FOURTH CAUSE OF ACTION AND RULE 54(b)
CERTIFICATION

The court held a hearing on December 14, 2007 on Defendant's Motion to Reconsider Order Denying Defendant's Motion to Dismiss Plaintiff's Fourth Cause of Action and on Plaintiffs' Motion for Summary Judgment on Fourth Cause of Action. William J. Lafferty appeared for Plaintiffs. Iain A. Macdonald appeared for Defendant.

PARTIAL SUMMARY JUDGMENT AND RULE 54(b)
CERTIFICATION

Upon due consideration, and for reasons stated on the record at the hearing and in the accompanying memorandum, the court hereby enters partial summary judgment as follows.

4 (1) Summary judgment is entered on Plaintiffs' fourth claim
5 for relief that the \$24,981,069.66 judgment entered on January 10,
6 2007 in Delaware Court of Chancery Case No. CIV.A. 489 is excepted
7 from discharge under 11 U.S.C. § 523(a)(4).

8 (2) Pursuant to Federal Rule of Civil Procedure 54(b),
9 incorporated by Fed. R. Bankr. Proc. 7054(a), the court having
10 determined that there is no just reason for delay, the court
11 expressly directs immediate entry of final judgment on Plaintiffs'
12 fourth claim for relief.

****END OF PARTIAL SUMMARY JUDGMENT****

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**PARTIAL SUMMARY JUDGMENT AND RULE 54(b)
CERTIFICATION**

-2-

1 Court Service List
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Iain A. Macdonald, Esq.
Law Offices of Macdonald & Associates
Two Embarcadero Center, Suite 1670
San Francisco, CA 94111-3930

Michael C. Fallon, Esq.
Law Offices of Michael C. Fallon
100 E Street, Suite 219
Santa Rosa, CA 95404

Michael J. Baker, Esq.
William J. Lafferty, Esq.
Matthew L. Beltramo, Esq.
Howard, Rice, Nemerovski, Canady,
Falk & Rabkin
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
FEBRUARY 14, 2008
SAN FRANCISCO, CA
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$500

RECEIVED
FFR 14 2008
RICHARD W. WEIKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 Golden Gate Ave
P.O. 36060
San Francisco, CA
94102



HASLER
\$1,480
02/12/2008
Mailed From 94104